

CHAPTER NO. 61

HOUSE BILL NO. 1361

By Representatives Sargent, Boyer

Substituted for: Senate Bill No. 1638

By Senators Clabough, Atchley

AN ACT to amend Tennessee Code Annotated, Title 48, Chapter 2, Part 1, relative to registration of securities, broker-dealers, agents, and investment advisers under the Tennessee Securities Act of 1980.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The name of this Act shall be "The Securities Omnibus Act of 2001."

SECTION 2. TCA §48-2-104 is amended by designating the existing language as subsection (a) and by adding the following new, appropriately designated, subsection:

(b) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, Title 4, Chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

SECTION 3. TCA §48-2-105(b) is amended by deleting the language "information specified in § 48-2-107(c) and".

SECTION 4. TCA §48-2-106(b) is amended by deleting the language "information specified in § 48-2-107(c) and".

SECTION 5. TCA §48-2-107(c) is amended by deleting the existing subsection in its entirety and by redesignating the existing subsections accordingly.

SECTION 6. TCA §48-2-107(h) is amended by deleting the language ", except those filed pursuant to subsection (c),".

SECTION 7. TCA §48-2-107(m) is amended by deleting the language ", except those filed pursuant to subsection (c),".

SECTION 8. TCA §48-2-109(c)(2) is amended by deleting the existing language and by adding the following new language:

The person is required to register as an investment adviser pursuant to Section 203 of the Investment Advisers Act of 1940; provided that an initial notice filing, consisting of any documents filed with the SEC, a consent to service of process, and a nonrefundable fee of one hundred dollars (\$100) shall be filed with the commissioner or the commissioner's designee, with payment of any reasonable costs charged by the designee for processing such filings, ten (10) days prior to the person acting as an investment adviser as defined by §48-2-102(7); and a renewal notice filing containing such information as the commissioner by rule requires and a nonrefundable fee of one hundred dollars (\$100) shall be filed with the commissioner or the commissioner's designee, with

payment of any reasonable costs charged by the designee for processing such filings for each successive year in which such person acts as such investment adviser; every notice filing of an investment adviser expires annually, unless timely renewed, on December 31 of each year; or

SECTION 9. TCA §48-2-109(d) is amended by deleting the existing language thereof and by adding the following new, appropriately designated, subparagraphs:

(1) Every registration of a broker-dealer or investment adviser expires annually, unless timely renewed, on December 31 of each year.

(2) Every registration of an agent expires annually, unless timely renewed, on December 31 of each year.

(3) Every notice filing of an investment adviser expires annually, unless timely renewed, on December 31 of each year.

(4) A registration or notice filing is timely renewed if the renewal application, all required exhibits, and fees are on file in the office of the commissioner, or such other locations within or without this state as the commissioner by rule designates, by the close of business of the date of expiration or by December 31 of each year, if such close of business is on a business weekday or else by the close of business of the first business weekday prior to the date of expiration.

SECTION 10. TCA §48-2-109 is amended by adding the following new, appropriately designated, subsection after subsection (d):

(e) The commissioner may, after notice and an opportunity for a hearing under the Uniform Administrative Procedures Act, Title 4, Chapter 5, impose a fine against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

SECTION 11. TCA §48-2-110(a)(1) is amended by deleting the existing language thereof in its entirety and by adding the following new language :

A broker-dealer, agent, or investment adviser may obtain an initial or renewal registration by filing with the commissioner or the commissioner's designee an application, together with a consent to service of process pursuant to §48-2-124(e), and by paying any reasonable costs charged by the designee for processing such filings.

SECTION 12. TCA §48-2-112(d) is amended by deleting the existing language thereof in its entirety and by adding the following new language:

(d) In any case in which the commissioner is authorized to deny, revoke, or suspend the registration of a broker-dealer, investment adviser, or agent or applicant for broker-dealer, agent, or investment adviser registration, the commissioner may, in lieu of or in addition to such disciplinary action, impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for all violations for any single transaction.

SECTION 13. TCA §48-2-112(f) is amended by deleting the existing language thereof in its entirety and by adding the following new language:

(1) Upon such terms and conditions as the commissioner deems in the public interest and necessary for the protection of investors, any registered broker-dealer, agent, or investment adviser may withdraw from registration by filing a written notice of withdrawal with the commissioner or by filing a notice of withdrawal through a designated filing depository.

(2) Withdrawal from registration as a broker-dealer, agent, or investment adviser becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the commissioner by order may permit.

SECTION 14. TCA §§48-2-115(f) is amended by deleting the existing language thereof in its entirety and by adding the following new language:

(1) The commissioner may designate filing depositories for all records required to be filed and maintained under this part. These records may be maintained in original form or by means of microfilm, microfiche, microphotographic reproduction, photographic reproduction, word processing, computerization, or other acceptable reproductive methods.

(2) The commissioner is further authorized to participate, in whole or in part, in the central registration depository systems Web Central Registration Depository (Web CRD) and Web Investment Advisers Registration Depository (IARD), in cooperation with the National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), other states and the United States, to the extent the commissioner deems participation as being in the public interest and necessary for the protection of investors.

(3) The commissioner is further authorized to participate, in whole or in part, in a Securities Registration Depository system, in cooperation with the NASAA, other states, and the United States, to the extent the commissioner deems participation as being in the public interest and necessary for the protection of investors.

SECTION 15. TCA §48-2-125(a)(1)(A) is amended by deleting the existing language thereof in its entirety and by redesignating the existing subsections accordingly.

SECTION 16. TCA §48-2-125(a)(2) is amended by substituting "a" in place of "such" in the first sentence.

SECTION 17. TCA §48-2-125(a) is further amended by adding the following new, appropriately designated, subsection:

(a)(3) All documents referred to in subsections (a)(1) and (a)(2) of this section which have been filed and recorded on the Electronic Data Gathering Access and Retrieval (EDGAR) system, or other electronic data gathering system maintained by the securities and exchange commission, may be utilized in lieu of filing such documents in paper form with the commissioner or the commissioner's designee, provided that the person making the notice filing provides an accurate filing number or other identifying designation issued by the securities and exchange commission, and that a printed or electronically stored copy is immediately accessible to the commissioner or the commissioner's designee.


SECTION 18. This Act shall become effective upon becoming law, the public welfare requiring it.

PASSED: March 26, 2001


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 4th day of April 2001


DON SUNDQUIST, GOVERNOR